

**APPENDIX**

Supreme Court of California  
**FILED**

Michael Monk & Gage

In the Supreme Court  
of the  
United States

October Term, 1977

No. 77-293

Berna Kulko,  
*Appellant,*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND  
FOR THE CITY AND COUNTY OF SAN FRANCISCO;  
Sharon Kulko Horn,  
*Appellee.*

On Appeal from the Supreme Court of  
the State of California

Argued October 20, 1977

Decided December 5, 1977

**APPENDIX**

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**In the Supreme Court  
OF THE  
United States**

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OCTOBER TERM, 1977

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No. 77-293

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EZRA KULKO,  
*Appellant,*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND  
FOR THE CITY AND COUNTY OF SAN FRANCISCO;  
SHARON KULKO HORN,  
*Appellees.*

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On Appeal from the Supreme Court of  
the State of California

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Filed August 20, 1977  
Jurisdiction Postponed December 5, 1977

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**RELEVANT DOCKET ENTRIES**

February 5, 1976—Complaint to Establish Foreign Judgment of Divorce and For Modification of Foreign Judgment as Established To Award Custody of Minor Children to Plaintiff and To Increase Child Support Payments: Request for Order for Temporary Custody and Restraining Order—Superior Court, City and County of San Francisco

March 1, 1976—Summons and Affidavit of Service—Superior Court, City and County of San Francisco

April 1, 1976—Notice of Motion To Quash Service of Summons for Lack of Personal Jurisdiction—Superior Court, City and County of San Francisco

May 6, 1976—Declaration in Support of Motion To Quash Service of Summons—Superior Court, City and County of San Francisco

May 10, 1976—Affidavit in Opposition To Motion To Quash Service of Summons—Superior Court, City and County of San Francisco

May 17, 1976—Minute Order of San Francisco Superior Court Denying Motion To Quash—Superior Court, City and County of San Francisco

June 16, 1976—Petition for Writ of Mandate—California Court of Appeal

August 4, 1976—Alternative Writ of Mandate—California Court of Appeal

September 2, 1976—Return of Sharon Kulko Horn,  
Real Party in Interest, By Way of Verified An-  
swer To Alternative Writ of Mandate—Califor-  
nia Court of Appeal

October 8, 1976—Opinion of Court of Appeal dis-  
charging Alternative Writ and denying Petition  
for Peremptory Writ

November 17, 1976—Petition for Hearing—California  
Supreme Court

November 29, 1976—Answer of Sharon Kulko Horn to  
Petition for Hearing—California Supreme Court

May 26, 1977—Opinion of California Supreme Court  
holding that California has jurisdiction over Ap-  
pellant—California Supreme Court

August 3, 1977—Notice of Appeal to the Supreme  
Court of the United States—California Supreme  
Court

August 20, 1977—Appeal docketed in United States  
Supreme Court

Superior Court of the State of California  
for the City and County of San Francisco

No. 701 626

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Sharon Kulko Horn,	Plaintiff,
vs.	
Ezra Kulko,	Defendant.

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[Filed Feb. 5, 1976]

**COMPLAINT TO ESTABLISH FOREIGN JUDGMENT OF DI-  
VORCE AND FOR MODIFICATION OF FOREIGN JUDG-  
MENT AS ESTABLISHED TO AWARD CUSTODY OF  
MINOR CHILDREN TO PLAINTIFF AND TO INCREASE  
CHILD SUPPORT PAYMENTS: REQUEST FOR ORDER  
FOR TEMPORARY CUSTODY AND RESTRAINING ORDER**

Plaintiff alleges as follows:

## I

Plaintiff is now and since January 1972 has been  
a resident of the City and County of San Francisco,  
State of California.

## II

Defendant is a resident of New York City, County  
of New York, State of New York.

### III

Plaintiff and defendant intermarried on July 29, 1959 at San Francisco, California.

### IV

There are two children of said marriage, whose names and birthdates are as follows: Darwin Kulko, born June 23, 1961 and Ilsa Kulko, born July 10, 1962.

### V

On September 19, 1972 plaintiff and defendant entered into an Agreement which settled their support rights, provided for split custody of the minor children, provided for support of the minor children when they were in plaintiff's custody, and provided that defendant would pay all expenses for the children's education, clothing and medical, hospital and dental expenses. A copy of said agreement is attached hereto as Exhibit "A" and made a part hereof.

### VI

On September 25, 1972 plaintiff was granted a decree of divorce from defendant in the Republic of Haiti, Civil Court of Port-au-Prince. A copy of said decree is attached hereto as Exhibit "B" and made a part hereof. By its terms, said decree incorporates by reference said agreement.

### VII

Under the terms of said Agreement, the two minor children were to live with defendant while attending school and with plaintiff during the summer, Christ-

mas and Easter holidays; defendant was ordered to pay to plaintiff the sum of \$3,000.00 per year for the support of said minor children when residing with plaintiff and said sum was not broken down as to how much was for each child.

### VIII

Since the execution of said agreement on September 19, 1972 and the granting of the decree on September 25, 1972, circumstances have changed in the following manner:

(1) Darwin has come to live full time with plaintiff and is in the actual physical custody of plaintiff and has been in her actual physical custody since January 1976.

(2) Ilsa has come to live full time with plaintiff and is in the actual physical custody of plaintiff and has been in her actual physical custody since December 1974.

(3) Plaintiff's expenses for said children have increased since she has their full time care, custody and control.

Because of said changed circumstances, it is therefore necessary for the Court to modify this decree upon its establishment as a California judgment to award custody of said minor children to plaintiff and to increase the amount of child support.

## IX

Plaintiff needs and defendant has the ability to pay reasonable attorney fees and costs for this proceeding.

## X

Both minor children are enrolled in private schools in the San Francisco area and their educational and psychological needs are being met under their present living arrangements.

Plaintiff is informed and believes, and upon such information and belief, alleges that defendant has threatened to remove said children from the State of California and from the custody of plaintiff without any regard for the traumatic and detrimental effect which said action would have on said children and on their future psychological and emotional well-being.

It is, therefore, necessary that the above entitled Court issue its order restraining defendant from removing said minor children from the home of petitioner and from the State of California during the pendency of this action and until the final determination of this action and, further, that plaintiff be granted temporary custody of said minors during the pendency of this action.

## XI

It is in the best interests of said minor children that custody be awarded to plaintiff since said chil-

dren are in her actual custody and she is able to provide the attention and care that they need.

**WHEREFORE**, Plaintiff prays:

1. That the Divorce Decree between the parties heretofore entered by the Civil Court of Port-au-Prince be established as a California judgment.
2. That both parties be ordered to comply with all the provisions of said judgment, save and except those provisions hereinafter modified by this Court.
3. That said Decree and the provisions therein regarding custody be modified to award permanent custody of the minor children to plaintiff.
4. That said Decree and the provisions therein for the support of the minor children be modified and increased and defendant ordered to pay a reasonable amount of monthly support for each child.
5. That temporary custody of said minor children be awarded to plaintiff during the pendency of this action.
6. That defendant be restrained during the pendency of this action and permanently thereafter from removing said minor children from the home of plaintiff and from the State of California and that if defendant should attempt to remove said minors, plaintiff shall notify any peace officer, and said peace officer is ordered to enforce said order of this court.
7. That plaintiff be awarded reasonable attorney fees and costs for this proceeding.

8. For such other and further relief as this Court may deem proper.

Dated: February 4, 1976.

Schapiro and Thorn, Inc.  
By Suzie S. Thorn  
Attorneys for Plaintiff

[Verification Omitted in Printing]

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**Exhibit "A"**

AGREEMENT, made this 19th day of September, 1972, by and between SHARON KULKO (hereinafter referred to as the "Wife") residing at 2299 Sacramento, San Francisco, California, and EZRA KULKO (hereinafter referred to as the "Husband"), residing at 7 West 96th Street, Borough of Manhattan, City and State of New York.

**WITNESSETH:**

WHEREAS, the parties hereto were married to each other in San Francisco, California, on July 29, 1959; following which they resided together as husband and wife in the County, City and State of New York; and

WHEREAS, there have been two children born of said marriage, to wit: DARWIN KULKO, born June 23, 1961, and ILSA LEE KULKO, born July 10, 1962; and

WHEREAS, in consequence of disputes and unhappy differences, the parties hereto have separated

and agreed to live separate and apart during their natural lives;

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and promises hereinafter contained, the parties hereto do hereby mutually agree as follows:

**FIRST:** It shall be lawful for the parties hereto at all times to live and continue to live separate and apart. Each shall be free from interference, authority and control, direct or indirect, by the other as fully as if he or she were sole and unmarried. Each may, for his or her separate use and benefit, conduct, carry on and engage in any business, profession or employment which to him or her may seem advisable.

**SECOND:** Neither of the parties hereto shall annoy or molest the other, nor compel or endeavor to compel the other to cohabit or dwell with him or her by any legal or other proceeding for restoration of conjugal rights or otherwise.

**THIRD:** The parties hereto hereby agree to the following with respect to the care, custody and control of the aforementioned children of their marriage:

1. That during the period of the year when the children are attending school, said children shall reside with and remain in the care, custody and control of the Husband.

2. That during the summer months of mid-June, July, August and mid-September, and during Christmas and Easter vacation weeks, said children shall

reside with and remain in the care, custody and control of the Wife.

3. That during such times as the children are in the care, custody and control of the Husband, the Wife shall have full and unlimited rights of visitation with said children.

**FOURTH:** The Husband hereby agrees to pay to the Wife the sum of \$3,000.00 annually for the support and maintenance of their said children during the aforementioned periods when said children reside with and are in the care, custody and control of the Wife. Said sum shall be paid bi-monthly, at the rate of \$500.00, beginning on December 1, 1972, and continuing on the first day of each second month thereafter until such time as said children have attained their majority. Said payments shall be mailed to the Wife at 2299 Sacramento, San Francisco, California, or at any other address which the Wife may designate from time to time in writing. The Husband further agrees that he will be responsible for and will pay all obligations incurred on behalf of said children for the following:

1. Education
2. Clothing
3. Medical, hospital and dental expenses

**FIFTH:** The Wife states that she is self-supporting and hereby waives any claim for support and maintenance from the Husband.

**SIXTH:** Each of the parties hereto shall promptly notify the other party in the event of serious illness or injury of either of the children. Serious illness or injury shall mean such illness or injury as confines a child to bed for more than three (3) days, or for which a child has been hospitalized.

**SEVENTH:** This agreement shall not be a bar to any action for divorce by either of the parties hereto against the other, but in the event that either of said parties shall at any time hereafter obtain a decree of divorce against the other, then this agreement shall be submitted to the Court wherein the action for divorce is instituted for approval and shall thereupon be incorporated in such judgment of divorce by reference but shall not be merged therein and shall survive any decree.

**EIGHTH:** The Husband hereby agrees to indemnify and hold the Wife harmless from any and all attorney fees, costs and expenses which she may incur by reason of the default of the Husband in the performance of any of the obligations required to be performed by him pursuant to the terms and conditions of this agreement.

**NINTH:** The parties hereto acknowledge that each of them is making this agreement of his and her own free will and volition, that each has had the benefit of his and her own independent legal counsel, and that no coercion, force, pressure or undue influence has been used against either party in the making of this agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

/s/ Sharon Kulko  
Sharon Kulko

/s/ Ezra Kulko  
Ezra Kulko

[Jurat Omitted in Printing]

Exhibit "B"

EQUALITY REPUBLIC OF HAITI

DIVORCE DECREE OF

Sharon Kulko	Plaintiff,
against	
Ezra Kulko	Defendant.

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In the year nineteen hundred seventy-two, 169th year of Independence, and on September 25, at ten o'clock in the morning.

We, ERNEST LOUIS CHARLES, Municipal Officer for the West Section of Port-au-Prince, undersigned.

Having seen the documents signified to us by act of the bailiff, ALBERT HALL, of the Civil Court of Port-au-Prince, upon request of: MRS. SHARON KULKO, the plaintiff, living and domiciled at 2299 Sacramento, San Francisco, California, having for mandatary and lawyer of the jurisdiction of Port-au-Prince, MR. MICHEL D. DONATIEN, whose office is located in Port-au-Prince, Place Geffrard No. 17, filing a divorce action against her husband, MR. EZRA KULKO, the defendant, living and domiciled at: New York City, New York, represented by his mandatary and lawyer, MR. MARC L. RAYMOND of the jurisdiction of Port-au-Prince, in conformity with Article nine of the law of June 28, 1971.

Certify to have transcribed in our records the decisions of the judgment rendered by the Civil Court of this Jurisdiction between the parties, on September 21, 1972 as follows:

**FOR THESE REASONS:** The Court having received and considered the request for divorce filed by the plaintiff, who appeared in person in Court on September 21, 1972, the Power of Attorney and submission to jurisdiction filed by the defendant, and both parties being duly represented by counsel of their own choice in Court, the Court is of the opinion that it has jurisdiction of the parties and of the cause of action by virtue of Articles 1 and 2 of the Divorce Law of Haiti as amended on June 28, 1971, and that the plaintiff is entitled to the relief requested in the petition for divorce.

Says, (ORDERED) that the matrimonial links existing between the plaintiff and the defendant established by their marriage celebrated on July 29, 1959 at San Francisco, California ARE DISSOLVED; that the said MRS. SHARON KULKO, IS AND REMAINS DIVORCED from the said MR. EZRA KULKO upon the ground of incompatibility of character.

Says that the Separation Agreement executed between the parties on September 19, 1972 at New York City, New York is incorporated in the present judgment with the same force and effect as if it were reproduced in its entirety without being destroyed by the fact of its incorporation so that both parties have

to comply with their respective obligations contained in it.

Says that the minor children of the parties: DARWIN and ILSA LEE KULKO WILL STAY IN THE JOINT CUSTODY OF THE FATHER AND MOTHER according to the terms of the Separation Agreement.

Decides as it herein appears and pronounced by us, THEOPHILE JEAN FRANCOIS, Judge in Public and Civil audience on this day of September 21, 1972, in the presence of MR. HYPPOLITE THERMITUS, Deputy of the Commissary of the Government of this Jurisdiction, with the assistance of MR. ASCENCIO JUMELL, Clerk of the Court. In testimony thereof, we have drawn and signed this decree at our office located in Port-au-Prince, Haiti, Carrefour. Receipt of the General Administration of taxes under No. 43858-JJ.

SIGNED: ERNEST LOUIS CHARLES

SEAL

I, Christiane Manoukian, hereby certify that I am fully conversant with both French and English languages, and that the above is a true and correct translation from the original French of the Divorce of MRS. SHARON KULKO from her husband MR. EZRA KULKO.

/s/ Christiane Manoukian

Insert name of court, judicial district or branch court, if any, and Post Office and Street Address:

City Hall  
400 Van Ness Avenue  
San Francisco, Calif. 94102

(Title Omitted In Printing)

[Filed Mar. 1, 1976]

### SUMMONS

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

**AVISO!** Usted ha sido demandado. El Tribunal puede decidir contra Ud. sin audiencia a menos que Ud. responda dentro de 30 días. Lea la informacion que sigue.

**1. TO THE DEFENDANT:** A civil complaint has been filed by the plaintiff against you. (See footnote)

a. If you wish to defend this lawsuit, you must within 30 days after this summons is served on you, file with this court a written pleading in response to the complaint (if a Justice Court, you must file with the court a written pleading or cause an oral pleading to be entered in the docket in response to the complaint, within 30 days after this summons is served on you).

b. Unless you so respond, your default will be entered upon application of the plaintiff and

this court may enter a judgment against you for the relief demanded in the complaint, which could result in garnishment of wages, taking of money or property or other relief requested in the complaint.

c. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be filed on time.

Dated: February 5, 1976

(SEAL) Carl M. Olsen, Clerk

By Richard F. Metter, Deputy

**2.  NOTICE TO THE PERSON SERVED:**  
You are served

- a.  As an individual defendant.
- b.  As the person sued under the fictitious name of: .....
- c.  On the behalf of: .....

Under:  CCP 416.10 (Corporation)  
 CCP 416.20 (Defunct Corporation)  
 CCP 416.40 (Association or Partnership)

Other:

- CCP 416.60 (Minor)
- CCP 416.70 (Incompetent)
- CCP 416.90 (Individual)

Superior Court of the State of California  
for the City and County of San Francisco

(Title Omitted In Printing)

**RELIABLE PROCESS SERVICE**

**AFFIDAVIT OF SERVICE AND  
AFFIDAVIT OF INVESTIGATION UNDER SOLDIERS'  
AND SAILORS' CIVIL RELIEF ACT**

State of New York

County of Kings

Stan E. Gaddy being duly sworn deposes and says: I reside at 731 Hancock Street, Bklyn, New York City, that on the 23rd day of February, 1976, at No. 515 Madison Avenue, Borough of Manhattan, City of New York, I served the within summons upon Ezra Kulko, Male, White, 37 years, 5'6 150 lbs., brown hair at 12 noon, the defendant in this action by delivering to and leaving a true copy of said summons with said defendant personally. I further state that I knew the person so served as aforesaid to be the same person mentioned and described in the said summons and as the defendant in this action.

I am over the age of 21 years and not a party to the action.

I asked him whether he was in the service of the United States Government in any capacity whatever. He told me he was not. He was clad in ordinary civilian clothes and wore no uniform of any kind. Upon information and belief I aver that the defend-

ant is not in the military service of the United States at the present time as that term is used in the Act of Congress known as "The Soldiers and Sailors Civil Relief Act." The sources of my information and the grounds of my belief are the conversations above narrated.

That the said defendant is not in the Military Service of any country allied with this nation in the conduct of the present war, nor has the said defendant received notice of induction into the armed forces of the United States.

Sworn to before me this 24th  
day of February, 1976

(Seal) Moe Korenman

Notary Public, State of New York,  
No. 24-7338700 Qual. In Kings Co.,  
Commission Expires March 30, 1976

Stan E. Gaddy  
License # 743405

Superior Court of California,  
County of San Francisco

(Title Omitted In Printing)

[Filed Apr. 1, 1976]

**NOTICE OF MOTION (MARRIAGE)**

**To QUASH SERVICE OF SUMMONS FOR  
LACK OF PERSONAL JURISDICTION  
(UNDER RULE 1234)**

**TO:** Plaintiff, SHARON KULKO HORN, and to  
SUZIE S. THORN, her attorney at law

Notice is given that Defendant, EZRA KULKO, will move this court, located at City Hall, San Francisco, California on April 15, 1976 at 9:30 a.m., Department or Room No. Law and Motion for certain orders as set forth in the attached REQUEST FOR ORDER AND DECLARATION, to which is attached:

Memorandum of Points and Authorities

Dated, March 31, 1976

/s/ Lawrence H. Stotter,  
Attorney for Defendant

(Title Omitted In Printing)

**REQUEST FOR ORDER AND  
DECLARATION IN SUPPORT OF**  
 **ORDER TO SHOW CAUSE**  
 **[x] NOTICE OF MOTION**

**(OMITTED)**

\* \* \* \* \*

**\*\* INJUNCTIVE/OTHER ORDER.** I request an injunctive or other order as set forth on the reverse.

Moving party, herein named as defendant and specially appearing for all purposes of this motion, moves the Court for an order quashing service of summons on him.

The motion will be made on the ground that this Court lacks personal jurisdiction over him in that he is a nonresident who does not have sufficient contact with California to satisfy due process requirements.

**DECLARATION OF LAWRENCE H. STOTTER**

I declare that I am an attorney, licensed to practice law in the State of California, and that I represent the defendant in this action filed by plaintiff to establish a foreign judgment of divorce and for modification to award child custody to plaintiff and increase child support, in his special appearance to quash service.

I declare on information and belief that defendant does not have "minimum contacts" with the State of

California. That he has continuously been a resident of the State of New York. That plaintiff obtained a divorce in Haiti, based on a separation agreement drawn and executed in New York, which agreement set forth that the children would reside with him during the school year in New York. The children were born in New York. Both children lived in New York, until without the consent of their father, their mother induced them to stay with her. The youngest child ran away from home in New York in January 1976, aided by a plane ticket sent to him by his mother. That defendant has no business or professional contacts with the State of California. That based on the foregoing facts, the Court lacks personal jurisdiction over the moving party and service of summons on him should be quashed.

I declare under penalty of perjury that the foregoing, including any attachments, is true and correct and that this declaration was executed on March 21, 1976 at San Francisco, California.

/s/ Lawrence H. Stotter  
 Lawrence H. Stotter  
 Attorney for Defendant

In the Superior Court of the State of California  
 in and for the City and County of San Francisco

(Title Omitted In Printing)

[Filed May 6, 1976]

**DECLARATION IN SUPPORT OF MOTION  
 To QUASH SERVICE OF SUMMONS**

I, LAWRENCE H. STOTTER, under penalty of perjury declare that:

- (1) That I am the attorney of record for Defendant, EZRA KULKO, a resident of New York State.
- (2) That I have previously filed herein on April 1, 1976, a Motion to Quash Service of Summons For Lack of Personal Jurisdiction by way of special appearance.
- (3) That in further support of said Motion, I attach herewith as Exhibits A and B respectively, affidavits of EZRA KULKO executed on April 28, 1976, which further support the contentions of my Motion that (a) there exists no contacts between the State of California and EZRA KULKO to warrant the exercise of personal jurisdiction by this Court and (b) that the home state and proper place of litigation of any custody proceedings relative to the

two minor children of the parties belongs in the State of New York, rather than California.

Dated: May 4, 1976.

Respectfully submitted,  
 Stern, Stotter & O'Brien  
 By Lawrence H. Stotter  
 Lawrence H. Stotter

**Exhibit "A"**

Superior Court of California  
 County of San Francisco

(Title Omitted In Printing)

**AFFIDAVIT IN SUPPORT OF MOTION  
 To QUASH SERVICE OF SUMMONS**

State of New York  
 County of New York—ss.:

EZRA KULKO, being duly sworn, deposes and says:

I am the defendant in the above-entitled action and make this affidavit in support of the motion to quash service of the summons for lack of personal jurisdiction and for that limited and special purpose only.

I have had very limited contact with the State of California. Specifically, I have been there only twice in my lifetime. Both times it was purely as an incident to my military service while serving in the armed

forces. My first contact with the State of California was on July 29, 1959, while en route to Korea. I left California for Korea on August 2, 1959. On July 29, 1959, I was married in California, but the marriage took place there only because it was a convenient stop-over between Fort Sam Houston in San Antonio, Texas, where I was stationed at the time, and Korea via Oakland Army Terminal, from whence I debarked for Korea. As a matter of fact, my wife was not then a resident of the State of California. She was a resident at the time of New York City, New York. She merely met me in California so that we might be married while I was en route to Korea.

Apart from the period from July 29, 1959, to August 2, 1959, which I have mentioned above, my only other contact with the State of California was on August 13 and August 14, 1960. Actually, my presence in California on those two days totaled only about 24 hours. I arrived in California late in the day on August 13, 1960, and left for New York City, New York, on August 14, 1960. This short stopover was also incidental to my military service. It was merely a stopover from Korea en route back to New York. The plaintiff was not in California at that time either. She was in New York City. As a matter of fact, from the time I met her in California on July 29, 1959, to get married until March of 1972, she was a resident of New York City, New York, with the exception of a period of six months from October 1960, to May of 1961, when she resided with me in Fort Monmouth, New Jersey, which was my military station at that time.

I have never been a resident of the State of California and have spent only the three or four days mentioned above in that State. I am and always have been a resident of the State of New York, with the exception of my military stations in Korea, Fort Monmouth, New Jersey and San Antonio, Texas. As a matter of fact, the plaintiff has always resided with me as husband and wife in the City of New York, New York, with the exception of our stay while I was in the military service in Fort Monmouth, New Jersey. She was a resident of New York City, New York, prior to our marriage on July 29, 1959, during our marriage, and after our separation. It was not until sometime after we separated that she moved to California. Even at that time, although she went to live in California, both children were left to reside with me in New York City, New York, pursuant to the terms of our Separation Agreement. Our daughter was not taken to California by the plaintiff until the Christmas-New Year holiday of 1974-1975. Our son remained with me in New York City, New York, until January of 1976, when plaintiff induced the child to come to her in California and sent him a plane ticket for that purpose.

/s/ Ezra Kulko  
Ezra Kulko

[Jurat Omitted in Printing]

Exhibit "B"  
Superior Court of California  
County of San Francisco

(Title Omitted In Printing)

**AFFIDAVIT IN SUPPORT OF MOTION TO  
QUASH SERVICE OF SUMMONS**

State of New York  
County of New York—ss.:

EZRA KULKO, being duly sworn, deposes and says:

1. I am the defendant in the above-entitled action and make this affidavit in support of the motion to quash service of the summons for lack of personal jurisdiction and for that limited and special purpose only.

2. At the time that the separation occurred between plaintiff and me, in March of 1972, I was residing at 7 West 96th Street, New York City, New York, along with our two children, then aged 10 and 11. Plaintiff's and my home and residence, as well as that of our children, were in New York City, New York, for the 13 years next preceding our separation. During that period we lived at the following addresses for approximately the following periods: June, 1959, to September, 1963, at 110 West 96th Street, New York City, New York; September, 1963, to September, 1965, at 444 Central Park West, New York City,

New York. From September, 1965, to the present, I have lived at 7 West 96th Street, New York City, New York. Plaintiff lived with me at that address until our separation.

3. After our separation I continued to live with our two children at 7 West 96th Street, New York City, New York. At that time plaintiff took up residence with her present husband at 2299 Sacramento, San Francisco, California. Thereafter she married her present husband and took up residence with him at 455 Marina Boulevard, San Francisco, California.

4. Plaintiff retained a New York attorney with whom I negotiated a settlement of our marital rights and obligations. I was not represented by an attorney. I acted in my own behalf. These negotiations resulted in the execution of a Marital Settlement Agreement on September 19, 1972. The Agreement was negotiated entirely in New York City between me and plaintiff's attorney, Elmer Drier. Plaintiff was in New York City at the time the Agreement was executed. It was signed by both of us in New York City, New York.

5. Directly after September 19, 1972, when the Separation Agreement was executed by both of us, plaintiff went to Haiti and there obtained a Decree of Divorce on September 25, 1972. The Decree was a bilateral one. I gave plaintiff an executed power of attorney at the time she left for Haiti. Thereafter plaintiff returned to San Francisco, California, where she took up her present residence with her present husband. At that time my marital residence continued

to be at 7 West 96th Street, New York City, New York, where I continued to live with the two children of our marriage.

6. In December, 1973, our son Darwin (born June 23, 1961) and our daughter Ilsa (born July 10, 1962) were spending Christmas vacation with plaintiff. Without my knowledge or consent, and in violation of our Agreement and the Decree of Divorce, plaintiff induced Darwin and Ilsa to remain with her at the end of the vacation period rather than return to my residence in New York City, New York. Thereafter I prevailed upon plaintiff's relatives to induce plaintiff to return the children to me at my home in New York City. Plaintiff did so, and the children returned to me in January of 1974.

7. In January, 1974, without my consent and without any prior discussion between plaintiff and me, and in violation of our Separation Agreement and the Decree of Divorce which incorporated that Agreement, plaintiff induced our daughter Ilsa to leave her brother and our home in New York City, New York, and to join plaintiff in San Francisco. Ilsa has remained there to the present time in continuing violation of our Separation Agreement and the Decree of Divorce which plaintiff procured in Haiti.

8. On January 12, 1976, plaintiff, again without my knowledge or consent and in violation of our Agreement and the Decree of Divorce, caused our son to leave our home in New York City and go to plaintiff's home in San Francisco. Plaintiff sent our son a plane ticket and apparently entered into a

conspiracy with him to leave our home in New York City without my knowledge. On January 12, 1976, he left our home, so far as I knew to take an examination at school, and instead boarded a plane and went on to San Francisco. He has remained in San Francisco until the present time. He has called me but once, and that was on January 13, 1976.

9. The fact of the matter is, and it is my position, that my two children have their residence with me in New York City, New York, where they had lived with me all of their lives until their improper removal by plaintiff.

10. The home State of my children is New York. They never lived anywhere else until plaintiff spirited them away. By Agreement prepared by plaintiff's own attorney in New York and executed by plaintiff in New York, plaintiff fixed the custody of the children with me in New York. Were it not for plaintiff's machinations, the children would have continued in residence with me in New York City.

11. I have paid plaintiff all sums which are required of me for the support of the children pursuant to the terms of the Separation Agreement between us and the Decree of Divorce. I am not in default under the terms of either that Decree or that Agreement. However, I refused and still refuse to make additional payments demanded by plaintiff, because I want my children returned to my home. I want them in New York with me, where they belong, and not in the State of California, where plaintiff holds them in violation of her commitments to me, in viola-

tion of the Agreement between us drawn by her own attorney, and in violation of the Decree of Divorce which she procured.

/s/ Ezra Kulko  
Ezra Kulko

[Jurat Omitted in Printing]

Superior Court of the State of California for  
the City and County of San Francisco

(Title Omitted In Printing)

[Filed May 10, 1976]

**AFFIDAVIT IN OPPOSITION TO MOTION TO  
QUASH SERVICE OF SUMMONS**

I, SHARON KULKO HORN, say:

1. In 1973, both Ilsa and Darwin were sent to San Francisco and sent back to New York in accordance with the agreement. They used tickets which defendant had provided with dates of flights provided by him.

2. In December 1973, Ilsa told her father before she left for Christmas vacation that she wanted to live with her mother now. Ilsa brought all her clothing with her and defendant bought her a one-way ticket only. Since that time, Ilsa has spent the summers of 1974 and 1975 in New York visiting her father, and he has always bought the return tickets for her to come back to San Francisco.

3. Darwin told me for a period of time that he wanted to live with me. After 1975 Christmas vacation, on or about January 10, 1976, Darwin called me and said he was in trouble, his father didn't want him and he wanted to come to San Francisco to live. As a result of that conversation, I sent him a plane ticket and left it at TWA. I told Darwin to think it over during school—he did and went to TWA and

came out here. I called defendant to tell him what was happening.

Defendant contacted Social Services in San Francisco, and a representative contacted me and Ilsa and Darwin, and reported to defendant that they were in school and well adjusted. Everything was fine.

4. Defendant has *not* paid all sums due and owing for child support; for five years he has paid \$2,100.00 and owes approximately \$12,900.00 under the support agreement and order.

5. At *no time* has defendant taken any legal steps in this matter in any Court, in New York or anywhere else. The first legal steps were the filing of this complaint to establish a foreign divorce and modify custody, which I filed on February 5, 1976.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 7, 1976, at San Francisco, Calif.

/s/ Sharon Kulko Horn

In the Court of Appeal  
First Appellate District

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Ezra Kulko,	Petitioner,
vs.	
Superior Court of the State of California for the City and County of San Francisco,	
	Respondent.
Sharon Kulko Horn,	
	Real Party in Interest.

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[Filed June 16, 1976]

**PETITION FOR WRIT OF MANDATE WITH  
MEMORANDUM OF POINTS AND AUTHORITIES**

To the Honorable Presiding Justice and Associate Justices of the Court of Appeal:

Petitioner, EZRA KULKO, respectfully alleges:

I

Petitioner, EZRA KULKO, is named defendant in an action commenced in respondent court, entitled *Sharon Kulko Horn v. Ezra Kulko*, Superior Court No. 701 626 (Exhibit 1). The plaintiff in that action is named in this petition as real party in interest.

II

On or about February 5, 1976, SHARON KULKO HORN, real party in interest herein, filed an action

against EZRA KULKO, petitioner herein, in the Superior Court for the City and County of San Francisco entitled **COMPLAINT TO ESTABLISH FOREIGN JUDGMENT OF DIVORCE AND FOR MODIFICATION OF FOREIGN JUDGMENT AS ESTABLISHED TO AWARD CUSTODY OF MINOR CHILDREN TO PLAINTFF AND TO INCREASE CHILD SUPPORT PAYMENTS: REQUEST FOR ORDER FOR TEMPORARY CUSTODY AND RESTRAINING ORDER** to which was attached an **AGREEMENT**, dated September 19, 1972, between SHARON KULKO and EZRA KULKO, and a **DIVORCE DECREE**, dated September 25, 1972, from the Republic of Haiti (Exhibit 1). Based on Mrs. Horn's verified complaint the respondent Court issued on that same date an **ORDER FOR CUSTODY AND RESTRAINING ORDER PENDING HEARING** (Exhibit 2). On February 23, 1976, EZRA KULKO, petitioner herein, was served with the copies of the foregoing pleading and order in New York.

By agreement between counsel, time to answer was kept open and on April 1, 1976, EZRA KULKO, petitioner herein, specially appeared through counsel and filed his **NOTICE OF MOTION (MARRIAGE) TO QUASH SERVICE OF SUMMONS FOR LACK OF PERSONAL JURISDICTION (UNDER RULE 1234)** with **MEMORANDUM OF POINTS AND AUTHORITIES** (Exhibits 3(a) and (b)), and hearing was set on said motion on April 15, 1976. The hearing was continued from April 15,

1976, to April 22, 1976, by agreement of counsel. At the request of the Court, the matter was continued from April 22, 1976, to May 10, 1976, for special hearing.

On May 6, 1976, EZRA KULKO, petitioner herein filed counsel's DECLARATION IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS, to which was attached two affidavits of EZRA KULKO (Exhibits 4, 4(a), and 4(b)), and FURTHER POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS (Exhibit 5).

On May 7, 1976, counsel for petitioner, EZRA KULKO, received from real party in interest, SHARON KULKO HORN, copies of pleadings entitled AFFIDAVIT IN OPPOSITION TO MOTION TO QUASH SERVICE OF SUMMONS, AND PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO QUASH SERVICE OF SUMMONS (Exhibits 6(a) and 6(b)).

On May 10, 1976, The Motion to Quash Service for Lack of Personal Jurisdiction was heard before the Honorable S. Lee Vavuris, counsel for EZRA KULKO making a special appearance, and submitted.

Respondent court denied Petitioner's Motion to Quash Service and Summons on May 17, 1976, and petitioner received respondent court's Minute Order on May 18, 1976 (Exhibit 7).

On May 26, 1976, respondent court for good cause shown, extended time for petitioner to file his Writ of Mandate to and including June 16, 1976, on petitioner's application therefor (Exhibit 8).

The basis of petitioner's motion to quash service for lack of personal jurisdiction was that petitioner had never been a resident of the State of California and that there have not been the required "minimal contacts" with the state by petitioner. Petitioner is, and has always been a resident of the State of New York with the exception of his military service in Korea, Fort Monmouth, New Jersey, and San Antonio, Texas. Prior to their marriage, and during it until the time of their separation, petitioner's former wife and the real party in interest herein was a resident of the State of New York. They met in California as petitioner was on his way to Korea and were married in California during a three-day stop-over. The separation agreement was drawn and executed in New York. Real party in interest obtained a divorce in the Republic of Haiti based on the New York separation agreement. Petitioner has no business or professional contacts with the State of California.

As set forth in the attached pleadings, petitioner does not challenge the subject matter of the action. Petitioner made a special appearance to challenge the jurisdiction of the respondent court over him *in personam*.

### III

The order of respondent court entered May 17, 1976, denying petitioner's motion to quash service of

summons (Exhibit 8) is in excess of the jurisdiction of respondent court, and in violation of constitutional, statutory and precedential limitations on its jurisdiction, in that it violates petitioner's right to due process in that he is not afforded a reasonable opportunity to be heard:

- (a) California Code of Civil Procedure §410.10:  
"A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States"
- (b) Article V, Constitution of the United States:  
"nor shall any person . . . be deprived of life, liberty, or property, without due process of law; . . ."
- (c) Precedential law setting forth constitution limitations on jurisdiction:  
*Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565;  
*Milliken v. Meyer*, 311 U.S. 457, 61 S. Ct. 339, 85 L. Ed. 278;  
*International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95;  
*Titus v. Superior Court of the State of California*, in and for the County of Contra Costa, 23 Cal.App.3d 792, 100 Cal.Rptr. 477 (1972);  
*Inselberg v. Inselberg*, 128 Cal. Rptr. 578 (1976).

#### IV

Petitioner's form of remedy, under California Rules of Court 1234, is to serve and file a notice of motion to quash the service of summons upon the ground

of lack of jurisdiction of the court over him or a notice of the filing of a petition for writ of mandate under the circumstances and in the manner provided by California Code of Civil Procedure §418.10. Said Section 418.10 provides for petitioning an appropriate reviewing court for a writ of mandate to require the trial court to enter its order quashing the service of summons. Petitioner has complied with Rule 1234 and C.C.P. §418.10.

#### V

WHEREFORE, petitioner prays that:

1. An alternate writ of mandate issue under the seal of this court commanding respondent and real party in interest to show cause before this court, at a time and place then or thereafter specified by court order, why respondent court should not be commanded to vacate its order of denial and to enter its order granting petitioner's motion to quash service of summons for lack of personal jurisdiction in the action of *Horn v. Kulko*, San Francisco Superior Court No. 701 626.
2. That, on the hearing of this petition, this court issue its peremptory writ of mandate compelling respondent court to vacate its order of denial and to enter its order granting petitioner's motion to quash service of summons for lack of personal jurisdiction.

Dated, June 15, 1976

Stern, Stotter & O'Brien  
By Lawrence H. Stotter  
Lawrence H. Stotter  
Attorneys for Petitioner

Court of Appeal of the State of California  
for the First Appellate District

**DIVISION FOUR**

(Title Omitted In Printing)

[Filed September 2, 1976]

**RETURN OF SHARON KULKO HORN, REAL PARTY IN  
INTEREST BY WAY OF VERIFIED ANSWER TO  
ALTERNATIVE WRIT OF MANDATE**

Real party in interest, hereinafter called "RP" answers the alternative writ of mandate issued herein and petitioner's petition for writ of mandate as follows.

**I**

This is an action to establish foreign judgment of divorce and for modification of foreign judgment as established, to award custody of minor children to RP, SHARON KULKO HORN, and to increase child support payments.

**II**

Petitioner and RP were married on July 29, 1959 in San Francisco, California, and are the parents of two minor children, DARWIN HORN KULKO, born June 23, 1961, and ILSA HORN KULKO, born July 10, 1962.

**III**

On September 19, 1972, petitioner and RP entered into an agreement, copy of which is attached to the Complaint in this action. (Said complaint is Exhibit 1 in petitioner's petition for writ of mandate filed herein, and any further references herein to exhibits are to those attached to said petition, except as otherwise stated.)

In that agreement, it is provided in THIRD

1. "During the period of the year when the children are attending school, said children shall reside with and remain in the care, custody, and control of the husband."

2. "That during the summer months of mid-June, July, August, and mid-September, and during Christmas and Easter vacation weeks said children shall reside with and remain in the care, custody, and control of the wife. The agreement also provides for the payment by the husband of child support. The agreement specifically shows that R.P. 'resides at 2299 Sacramento, San Francisco, California.'"

**IV**

On September 25, 1972, a divorce was granted to RP in the Republic of Haiti. (Copy of the decree is attached to Exhibit 1.)

Petitioner gave RP an executed power of attorney at the time she left for Haiti.

## V

Both children are now living with RP in San Francisco, California.

In 1973 both Ilsa and Darwin were sent to San Francisco and sent back to New York in accordance with the agreement, using tickets which petitioner had provided with dates of flights provided by him.

In December 1973 Ilsa told her father before she left for Christmas vacation that she wanted to live with her mother now. She brought all her clothing with her and petitioner bought her a one-way ticket only. Since that time, Ilsa has spent the summers of 1974 and 1975 and visited with her father, and he has always bought the return tickets for her to come back to San Francisco.

## VI

For some time Darwin told RP that he wanted to live with her. After the 1975 Christmas vacation and on or about January 10, 1976, Darwin called RP stating that he was in trouble, his father did not want him, and he wanted to come to San Francisco to live. As a result of that conversation, RP sent Darwin a plane ticket and told him to think it over, which he did, and he came to San Francisco, using that ticket. RP called petitioner to tell him what was happening. Petitioner contacted Social Services in San Francisco and their representatives contacted RP and Ilsa and Darwin and reported to petitioner that they were in school and well adjusted and everything was fine.

In this connection, petitioner wrote RP a letter regarding Darwin's going to California to live with her. A copy of that letter was introduced in evidence in the lower court, and a copy is attached hereto and marked "Exhibit A."

## VII

Petitioner has not taken any legal steps regarding custody or support of his children in any court in New York or elsewhere.

\* \* \*

WHEREFORE, RP prays that the petition for writ of mandate be denied.

Dated: August 31, 1976.

Schapiro and Thorn, Inc.

By Suzie S. Thorn

Attorneys for Real Party in Interest

**Exhibit "A"**

H. Justin Ross, D.D.S.  
 Ezra Kulko, D.D.S.  
 515 MADISON AVENUE  
 NEW YORK

—  
 ELDORADO 5-5885

Dear Sharon

Darwin has informed me of his intention of living with you. I am prepared to accept his decision. The only question in my mind is the way his decision was reached. He has become angry, beligerant [sic] & unlikeable. I can only attribute it to distortions of reality based upon information fed to him in a biased way. Because of this, my quiet, gentle, loveable child threatened me to do violence to Dominique.

I don't want a human being around me with this type of behavior pattern. You are welcome to it.

I would have hoped that our relationship was going to improve. I feel at this point it is unfeasable [sic].

I would like to renegotiate the original agreement with you in as much as it is invalidated.

I would like for you to present to me what you feel would be a fair and equitable arrangement.

I would like to do it without lawyers as you know how I feel about them.

As always,

/s/ Ezra

The opinion of the California Court of Appeal, First Appellate District, Division Four, has been printed in the Jurisdictional Statement, pages xix-xxii, and is designated therein as Appendix B. (References in the brief to this opinion are signified: J.S. App. B .....)

The opinion of the California Supreme Court, entered May 26, 1977, has been printed in the Jurisdictional Statement, pages i-xviii, and is designated therein as Appendix A. (References in the brief to this opinion are signified: J.S. App. A .....)